

REPORTER'S RECORD  
VOLUME 45 OF 50 VOLUMES  
TRIAL COURT CAUSE NO. 588227  
COURT OF CRIMINAL APPEALS CASE NO. AP-76,769

THE STATE OF TEXAS                    )     IN THE DISTRICT COURT  
  )  
VS.                                        )     HARRIS COUNTY, TEXAS  
  )  
CARL WAYNE BUNTION                    )     178TH JUDICIAL DISTRICT

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TRIAL PROCEEDINGS

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FILED IN  
COURT OF CRIMINAL APPEALS  
NOV 14 2012

**Louise Pearson, Clerk**

On the 6th day of March, 2012, the  
following proceedings came on to be heard in the  
above-titled and numbered cause before the Honorable  
David L. Mendoza, Judge Presiding, held in Houston,  
Harris County, Texas.

Proceedings reported by stenotype machine;  
Reporter's Record produced by computer-assisted  
transcription.

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178TH DISTRICT COURT

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1 (The following proceedings were held in  
2 the 178th District Court on the 19th floor.)

3 (Open court; defendant not present.)

4 THE COURT: All right. This is Cause  
5 No. 588227, State of Texas versus Carl Wayne Buntion.  
6 The record will reflect today's date is March the 6th  
7 2012. It's about 10:15 a.m. Counsel for the State  
8 and defense are present. Defendant is in the  
9 holdover on another floor. This is the 178th  
10 Criminal District Court, 19th floor.

11 Record will reflect that informally, I  
12 set out my understanding of an issue yesterday with  
13 the jury. And it's my understanding counsel for the  
14 defense wanted to make a motion concerning the jury  
15 foreman in the case and concerning an issue in the  
16 case as to several things. And I'll let both of  
17 y'all get on the record.

18 The record will further reflect that  
19 informally, I explained to the counsel my impression  
20 of what happened yesterday at 5:30, as follows:

21 At 5:30, I sat on the Bench in open  
22 court, in the presence of the defendant, defense  
23 counsel, counsel for the State and the audience. I  
24 informed the bailiff to bring in the jury, because I  
25 was going to retire them for the day and enter a

1 sequestration order, that counsel for the State and I  
2 had both discussed in chambers.

3                   The plan was to shut it down about  
4 5:30, so that arrangements could be made so that the  
5 jury could be transported to the local hotel. And  
6 the plan was at 5:30 to inform them of that  
7 sequestration order and to break them for the  
8 evening. Whereupon, I asked the bailiff to bring the  
9 jury in.

10                   The bailiff went to talk to the jury to  
11 bring them in. And then came back in the courtroom  
12 and said, "Judge, approach the Bench -- may I  
13 approach bench?" "Yes." And told me briefly, "Oh,  
14 Judge," something -- and I don't remember exactly,  
15 but something of "They may get a verdict if we stay a  
16 little longer," or "They're about to get a verdict,"  
17 or something like that.

18                   Whereupon, I said, "Okay." And I asked  
19 both sets of attorneys to approach the bench and  
20 informed them exactly as to what the bailiff had just  
21 told me 30 seconds before.

22                   Whereupon, Court stood in recess. Time  
23 passed. Maybe 15 minutes later, the jury buzzed  
24 according to everybody's recollection, and Deputy  
25 Johnson went to inquire about the buzzer. He did so,

1 came back, and told the Court that, "Judge, it was a  
2 misunderstanding, miscommunication." Something about  
3 they thought I was going in for something the first  
4 time I went to talk to them or something, but we're  
5 not going to have a verdict, or something like that.

6 Fine, so I get on the Bench quarter to  
7 6:00. Mr. Scardino is out of pocket, Mr. Keirnan's  
8 in court, Ms. Dozier's in court, Mr. Long's in court,  
9 the defendant's in court, and we bring in the jury.  
10 And then we bring in the jury. But before we do  
11 that, I tell Deputy Johnson, "I'm going to ask you in  
12 front of the lawyers in open court, to tell me just  
13 what you told me now about, you know, it was a  
14 misunderstanding," whatever.

15 So I asked him and he told me and he  
16 said for the first time, "Judge, they say they might  
17 need another hour or so, to reach a verdict," or  
18 something like that -- some words to that effect.  
19 And y'all heard what he said in open court, and it  
20 was on the record. So that's where we are.

21 Now, Deputy Johnson, do you concur with  
22 that version of events?

23 THE BAILIFF: Yes, sir.

24 THE COURT: Okay. Now, I can't quote  
25 you and you can't quote me, because this is basically

1 what I heard. And I didn't hear anything untoward.  
2 It's just -- it just goes to show that when you go  
3 get the bailiff -- get the jury, either bring them in  
4 or don't bring them in. Don't engage in  
5 conversations. Don't talk to the jury. If they have  
6 something they want to say -- tell me, they can put  
7 it in writing, have the foreman sign it.

8                   This is the state of the record. So  
9 you may proceed, Mr. Keirnan and Mr. Scardino, any  
10 motions you may have.

11                   MR. KEIRNAN: Thank you, Your Honor.  
12 If it please the Court, the Court is aware and the  
13 record is aware that the jury began to deliberate, I  
14 say, at approximately 1:30 or 2:00 yesterday,  
15 somewhere about that time. And lunch was brought in  
16 to them and they had been deliberating. And I concur  
17 completely with the events as you've stated them into  
18 the record as to what happened.

19                   However, I interpreted that this jury  
20 was not unanimous. That they're unable to reach a  
21 verdict, and it's for those reasons that a sufficient  
22 amount of time has passed, that they've been unable  
23 to reach a verdict and I ask to move this Court to  
24 discharge the jury and enter a life sentence at this  
25 time for those reasons.

1 I think, that although they didn't send  
2 a note to you. Through the informal communications  
3 they thought they could reach a verdict. They're  
4 unable to reach a verdict and as defense lawyers, we  
5 interpret that to be not unanimous. And once a  
6 verdict is not unanimous under the law, they should  
7 be disbanded and they should -- the defendant,  
8 Mr. Buntion, should receive a life sentence from you  
9 by law.

10 The other motion that I make at this  
11 time, is the -- the jury foreman, and we know it from  
12 the notes is Mr. Curry. Mr. Curry got on this jury  
13 over objections from the defense that he was a  
14 disqualified juror by law. And we did not have any  
15 strikes at that time and he was seated by the Court.  
16 That was the juror that was seated.

17 Had we had an additional peremptory  
18 challenge, we would have struck that juror in  
19 intelligently exercising a peremptory challenge,  
20 mainly because his brother is a police officer. And  
21 some other relations to law enforcement.

22 So, we now reurge to the Court that our  
23 worst nightmare comes true. A juror that we thought  
24 was disqualified, a juror that is -- that we would  
25 have exercised a challenge for cause for, is now the



1 jury foreman. And so we ask that the Court remove  
2 the foreman of the jury, remove him, and replace him  
3 with an alternate, the first alternate juror, in the  
4 interest of justice on behalf of Mr. Buntion, Your  
5 Honor.

6 THE COURT: All right. And what say  
7 the State?

8 MR. LONG: They haven't even  
9 deliberated as long as some witnesses were on the  
10 stand. So there's been no indication of a deadlock.  
11 And even if there were, the law would entitle you to  
12 give them an Allen charge, and we're nowhere near  
13 that -- yes, they do know. We're nowhere near that  
14 point now, at all.

15 And as to the removal of the foreman,  
16 the standard of challenges is gone now. We now have  
17 a seated jury, a lawfully seated jury. The standard  
18 for removal of a juror now is whether or not they're  
19 disabled and there's no been no evidence of that.

20 THE COURT: All right. Thank you. And  
21 one other thing, just so the record is clear. Your  
22 position is that the jury is -- perhaps is  
23 deadlocked, the defense position.

24 And Deputy Johnson, from your own  
25 words, what did anybody tell, when you first went to

1 bring them in at 5:30? And who told you what? Who  
2 told you and what -- what did that person tell you?

3 THE BAILIFF: On the initial entry into  
4 the jury room, Judge, the foreman, Mr. Curry, stated  
5 that, "Give us a little while longer, we're close  
6 to -- to getting -- having a decision."

7 THE COURT: Okay. That's what he said?

8 THE BAILIFF: Yes, sir.

9 THE COURT: Had you asked him anything  
10 before then, or had you just opened the door?

11 THE BAILIFF: No, sir, I just opened  
12 the door.

13 THE COURT: Okay. That's it. Then you  
14 came and told me about it.

15 THE BAILIFF: Then I came and told you  
16 about it.

17 THE COURT: All right. Then --

18 THE BAILIFF: Then the second ding  
19 came, I went back in. They inquired to why I  
20 initially came in the first time.

21 THE COURT: Okay. And what did they  
22 say and who said what?

23 THE BAILIFF: At that time, the  
24 foreperson, Mr. Curry, said, "I -- we rang the bell  
25 because we wanted to know what you came in for the

1 first time?

2 THE COURT: Okay. Go ahead.

3 THE BAILIFF: And then after that, I  
4 asked -- I inquired of Mr. Curry, "How much longer do  
5 y'all need?" He said, "Oh, another hour." And he  
6 said, "We're just getting ready to make a decision on  
7 the first issue." That's what I --

8 THE COURT: Okay. Thank you. Thank  
9 you very much.

10 The defense counsel's motions one and  
11 two are denied and the objection's overruled. And  
12 that concludes this hearing.

13 MR. KEIRNAN: Yes, sir. Thank you,  
14 Your Honor.

15 THE COURT: Thank you.

16 THE BAILIFF: And the jury -- Deputy  
17 Bronikowski called and the jury sent out another  
18 note.

19 THE COURT: Okay. Let's go.

20 (Hearing concluded.)

21 (Open court; defendant not present.)

22 THE COURT: This is Cause No. 588227,  
23 State of Texas versus Carl Wayne Buntion.

24 The record will reflect the jury has  
25 sent out another note. It's styled at the top, Note

1 Number Three. It's dated 3/6/12, 10:15 a.m. Reads  
2 as follows:

3 Please allow us to review the history  
4 charge sheet for Carl W. Buntion from his first  
5 arrest, it looks like, to last. And then parentheses  
6 it says, 14 charges. Foreman, something Curry and  
7 then written Steven Curry. File dated today's date,  
8 10:11 a.m.

9 And my response is: Dear Jurors --  
10 now, was that -- that sheet in evidence?

11 MR. LONG: There's one admitted by the  
12 defense, but it does not include all of his -- it  
13 doesn't include the Alabama conviction. So the one  
14 that I used that had all of them, was not admitted.  
15 There was one admitted by the defense for the Texas  
16 convictions, but it didn't include the first to the  
17 last. So I don't know --

18 THE COURT: Okay. Well, there's -- the  
19 defense one has 14 cases? Or does it have 13 and  
20 this is the 14th?

21 MR. SCARDINO: I agree with Mr. Long,  
22 we did introduce through S.O. Woods, a sheet that he  
23 testified off of. And it was -- it is in evidence  
24 and it has the -- all of his trips, if that's what  
25 they're referring -- there's nothing else in the

1 record except that, that would refer to that, that I  
2 know of -- that I can remember.

3                   They do have all the pen packets with  
4 all the trips, including Alabama --

5                   THE COURT: Yeah.

6                   MR. SCARDINO: And they do have all the  
7 trips. They have that again, the ones that we  
8 introduced with the disciplinary records on it, also.  
9 So they've got -- they've got that in duplicate. But  
10 there is -- I think I know what they're talking  
11 about, it's that thing that Woods testified from.  
12 It's a -- it's a one-page document that has every  
13 trip on it.

14                   MR. LONG: I don't know if they're  
15 talking about the one I used in closing, that wasn't  
16 admitted, that includes all of them.

17                   THE COURT: Well, let's do this. Pull  
18 both of them, we'll talk about it more on the record.  
19 Then I'll give them what -- I'll give them --

20                   MR. LONG: There's only one that was  
21 admitted. Mine was never admitted.

22                   THE COURT: I know. But -- then don't  
23 pull it. It's a nonissue then in that case. Go  
24 ahead and -- Ms. Adams, find that sheet and we'll  
25 talk about it.

1 And the Court stand in recess.

2 Remain seated, please.

3 (Recess.)

4 THE COURT: Counsel, approach the  
5 bench, please.

6 (Bench Conference.)

7 THE COURT: The record will reflect  
8 that Ms. Adams has tendered to the Court, Defense  
9 Exhibit No. 19, which is a one-page document, it's  
10 styled page 2, Buntion, Carl Wayne, TDC numbers, then  
11 a file we noted dates of TDCJ incarceration for  
12 Carl Wayne Buntion, AKA Jimmy Lee Pruitt.

13 I didn't count how many entries there  
14 are. But the point is, this is the only document  
15 that was admitted concerning 13, 14 arrests,  
16 incarcerations, pen trips, convictions, whatever that  
17 were in evidence.

18 So I'm going to probably let them have  
19 this, and respond: Dear Jurors:

20 MR. LONG: Can we put an objection on  
21 the record?

22 THE COURT: Sure.

23 MR. LONG: Okay. We object -- oh, you  
24 want to finish. I'm sorry.

25 THE COURT: No, let's talk about it.

1 That's -- that's another point for being up here.  
2 Yeah, I'm inclined to let it in. So what's your  
3 objection?

4 MR. LONG: Can I see the note real  
5 quick?

6 THE COURT: Sure.

7 MR. SCARDINO: Judge, if I may respond  
8 before he objects. I don't have a problem with it  
9 not going back to them.

10 THE COURT: Okay.

11 MR. SCARDINO: But the -- but that's  
12 the only thing that I -- that we could find that  
13 was -- that was sensitive to the question.

14 THE COURT: Yeah, because it talks  
15 about arrests. It was convictions. It was pen  
16 packets.

17 MR. SCARDINO: Right. Well, they have  
18 all the pen packets and they have all the -- they  
19 have all that.

20 THE COURT: I might just say literally  
21 -- answer it, there's no document concerning 14  
22 arrests.

23 MR. LONG: That was admitted.

24 THE COURT: That was admitted into  
25 evidence.

1 MR. LONG: Because this one's about 14  
2 charges and this doesn't have it. And I don't think  
3 --

4 MR. SCARDINO: Well, it does. It does,  
5 because those are duplicate -- a lot of those are  
6 double trips.

7 MS. DOZIER: Well, it says, first  
8 arrest to last. It doesn't include the Alabama  
9 either.

10 MR. LONG: It says, please allow us to  
11 review the history of charge sheet for Carl W.  
12 Buntion, from his first arrest to his last. And in  
13 parentheses, 14 charges. And that's not this  
14 document. This shows some. It shows arrests, but it  
15 doesn't show all the charges.

16 THE COURT: Okay.

17 MR. LONG: And it doesn't show first  
18 arrest to last. They have that information back  
19 there.

20 MS. DOZIER: In the form of pen  
21 packets.

22 MR. SCARDINO: Well, if you take them  
23 at it, they don't have anything on arrests. They  
24 have convictions.

25 MR. LONG: Correct.



1 THE COURT: Uh-huh.

2 MR. SCARDINO: That may just be  
3 semantics, but there is no such document.

4 THE COURT: We know what they want, but  
5 this isn't it.

6 MR. KEIRNAN: We're not going to object  
7 to their objections, you know.

8 MR. SCARDINO: I don't know. I'm not  
9 crazy about it going back anyway. But -- but if they  
10 --

11 THE COURT: Let's summarize here.

12 MR. LONG: Our request is the note say  
13 something along the lines of, nothing was admitted  
14 that shows a list of all of his arrests from first to  
15 last. To track their language.

16 MR. KEIRNAN: Do you agree with that?

17 MR. SCARDINO: Yeah, because there's  
18 nothing about arrests.

19 THE COURT: Okay. Dear Jurors: There  
20 was no --

21 MR. SCARDINO: Single document.  
22 Because there are some documents.

23 MR. LONG: Single document admitted  
24 into evidence.

25 MS. DOZIER: Yeah. There's a summary.

1 THE COURT: I'm going to say, there was  
2 no -- there was no charge -- there was no  
3 history charge -- well, let's think about this.  
4 There was no single --

5 MS. DOZIER: No summary?

6 THE COURT: There was no sheet I'm  
7 going to refer to. There was no charge sheet.

8 MR. LONG: That was admitted into  
9 evidence.

10 MR. SCARDINO: That was admitted into  
11 evidence.

12 THE COURT: I'm going to quote, history  
13 charge sheet. There's no history charge sheet for  
14 Carl W. Buntion, from his first arrest to last, 14  
15 charges, parenthesis, unquote, admitted into  
16 evidence -- as an exhibit? As an exhibit. Signed,  
17 David L. Mendoza, Judge, 178th District Court.

18 File date that, please, right here in  
19 the corner.

20 Any objections to this charge -- I  
21 mean, to this note on the -- Jury Note Number Four  
22 from? I mean number three.

23 MR. LONG: None from the State.

24 MR. SCARDINO: None from the defense,  
25 Your Honor.

1 THE COURT: All right. Do you waive --  
2 does defense waive bringing in Mr. Buntion and  
3 bringing the jury in, having me read this note to the  
4 jury in open court in his presence and y'all's  
5 presence?

6 MR. SCARDINO: The defense so waives  
7 that, Your Honor.

8 THE COURT: All right. Thank you.

9 MR. SCARDINO: We don't object to it.

10 THE COURT: All right. Thank you.

11 Record will reflect that the jury's  
12 Note Number Three, Court's reviewed it and discussed  
13 the issue in open court, and here at bench  
14 conference. And my response to the note is:

15 Dear Jurors: There was no, quote,  
16 history charge sheet for Carl W. Buntion from his  
17 first arrest to last, and in parenthesis, 14 charges,  
18 close quote, admitted into evidence as an exhibit.  
19 Signed, David L. Mendoza, Judge, 178th District  
20 Court. File dated today's date, 10:41 a.m.

21 And, Deputy Johnson, if you would, take  
22 it to the jury.

23 And for your records.

24 All right. Remain seated. Court  
25 stands in recess.

1 MR. KEIRNAN: Yes, sir.

2 (Bench Conference Concluded.)

3 (Deliberations continued.)

4 MR. SCARDINO: Yes, sir.

5 THE COURT: All right. This is Cause  
6 No. 588227. Today's date is March the 6th, 2012.

7 The jury has sent out a note, Note  
8 Number Four, as follows 3/6/12, 11:20 a.m. May we  
9 please get a fresh breath of air to clean our minds,  
10 please. Foreman, Steve Curry, Steve Curry, filed  
11 dated 11:23 a.m.

12 I'm going to bring them out in open  
13 court and respond: Yes, but we're going to take a  
14 break for lunch as -- while we're at it. And  
15 remember the same instruction, et cetera, et cetera.

16 All right. Bring out Mr. Buntion and  
17 then bring in Mr. -- bring in the jury, including the  
18 alternates.

19 Bring in the jury, please.

20 (Jury Panel enters courtroom.)

21 (Open court; defendant and jury panel  
22 present.)

23 THE COURT: Go ahead and file date  
24 this, please.

25 Be seated, please.

1 Good morning, members of the jury.

2 JURY PANEL: Morning.

3 THE COURT: Mr. Curry, I got Note  
4 Number Four. I'll put Note Number Four on top.

5 JUROR CURRY: Yes, sir.

6 THE COURT: And it's file dated March  
7 the 6th, 2012, 11:23 a.m. It's about 11:28 -- I  
8 mean, 11:38 a.m. now. It reads as follows: 3/6/12,  
9 11:20 a.m. May we please get a fresh breath of air  
10 to clear our minds, please. Signed, Foreman, Steven  
11 Curry.

12 And my response is: Dear Jurors, we're  
13 going to take a lunch break shortly. So we'll  
14 accommodate the break. It's going to be at -- out of  
15 the building. So we'll take a lunch break and  
16 remember the instructions I gave you yesterday.

17 The sequestration order about not  
18 making any kind of independent investigations, not  
19 talking about the case even at lunch time. Remember,  
20 just talk about the case when you're deliberating,  
21 when all 12 of you are physically present in the jury  
22 room. And don't do any kind of independent  
23 investigation of whatever sort or nature. Also,  
24 don't read any newspapers or listen to or watch TV or  
25 radio, or any kind of news broadcasts.

1                   Just have a good lunch and by the time  
2 you get there, it will in 12:00 noon thereabouts.  
3 We're going to take a break to about 1:15 or so. And  
4 if you get back before 1:15 or so, and you have  
5 another note, we won't be to answer it until after  
6 1:15 or so.

7                   So have a good lunch and remember the  
8 instructions. And this goes for all the jurors,  
9 including the alternates. Thank you very much.

10                  THE BAILIFF: All rise for the jury.

11                  (Jury exits courtroom.)

12                  (Lunch recess taken.)

13                  THE COURT: For the record, the jury  
14 has sent out Note Number Five. Before we get into  
15 that on the record, could I have defense counsel both  
16 sides present in the courtroom?

17                  So, remain seated. Court stand in  
18 recess until they get here.

19                  I need to talk to the bailiffs, please.

20                  Remain seated.

21                  (Recess.)

22                  (Discussion off the record.)

23                  THE COURT: Bring out Mr. Buntion,  
24 please.

25                  For the record, I've been back in

1 chambers dealing with some issues relative to  
2 logistics. It's now about 2:15 p.m. and I'll read  
3 this Note Number Five that the jury sent, when  
4 Mr. Buntion comes in the courtroom.

5 (Defendant enters courtroom.)

6 THE COURT: Okay. The jury sent out a  
7 note. It's styled Note Number Five. It's -- reads  
8 as follows: 3/6/2012, 1:35 p.m. Juror, dash --  
9 well, I don't want to mention her name, RM, initials,  
10 needs her mother called to make sure she is picking  
11 up her kids tonight, in the event we do not come up  
12 with a verdict. Their father -- and it names their  
13 father -- needs to be called also, to pick them up.  
14 Leaves a number.

15 And then it says, Mom, name, work  
16 number, cell number, foreman. Signed by the foreman  
17 of the jury. File dated March 6th, 2012, 1:37 p.m.

18 I'm going to bring them out and talk to  
19 them about this and say that will be done. But also  
20 I'm going to give them some instructions. It's  
21 2:15 p.m. If they arrive at a verdict by 5:30, fine.  
22 If they don't, that's fine. But I'm not going to  
23 unduly pressure this jury to arrive at a verdict  
24 because of the late hour. And I want to let them  
25 know and everybody in the courtroom to know that.

1 Tomorrow's another day. And the jury  
2 will take however much time is reasonably necessary  
3 to resolve the issues that they are charged with  
4 deciding.

5 So at this time -- where's Deputy  
6 Johnson? There you are. Would you bring out the  
7 jury, please.

8 Both sides ready?

9 MR. SCARDINO: Yes, sir.

10 MS. DOZIER: Yes, Your Honor.

11 MR. KEIRNAN: Yes, Your Honor.

12 THE COURT: All right. Thank you.

13 (Jury Panel enters courtroom.)

14 (Open court; defendant and jury panel  
15 present.

16 THE COURT: Be seated, please.

17 Good afternoon, members of the jury.

18 JURY PANEL: Good afternoon.

19 THE COURT: Got a note here, Note  
20 Number Five, reads as follows: 3/6/2012, 1:35 p.m.  
21 Juror, dash, names the juror, needs her mother called  
22 to make sure she is picking up her kids tonight, in  
23 the event we do not come up with a verdict. Their  
24 father, names the father, needs to be called also to  
25 pick them up, leaves a number. Mom, I think it says,



1 names the mom, work number, cell number. Signed  
2 Foreman. File dated, March 6th, 2012, 1:37 p.m.

3 Members of the jury, these folks are  
4 going to be called. And if there's a problem, we'll  
5 let you know. We'll let the juror know. We'll let  
6 the foreman know. Also, if other folks have similar  
7 issues, then write another note.

8 And I'm instructing you right now, that  
9 -- letting you know, that you are charged with the  
10 responsibility of considering all the evidence and  
11 applying the evidence to the law that applies in this  
12 case. But you are also instructed that you'll take  
13 as much time as is reasonably necessary to resolve  
14 the issues that you need to resolve and that you need  
15 to deal with.

16 Now, if that's done by 5:30 today,  
17 fine. If it's not done by 5:30 today, fine. But at  
18 5:30 or so, we're going to -- if you don't have a  
19 verdict, we're going to reset the case for further  
20 deliberations for tomorrow. And the same  
21 sequestration order that I read to you yesterday will  
22 apply. And I'll do that at the end of the day if, in  
23 fact, you don't arrive at a verdict by 5:30. If you  
24 do, fine; if you don't, that's fine, too.

25 But I want all of you to know, if you

1 have similar issues to this juror, let us know.  
2 Write another note. Have the foreman sign it and  
3 we'll deal with it, all right?

4 So if you would, continue your  
5 deliberations and remember the instructions I gave  
6 you. Thank you.

7 (Jury exits courtroom.)

8 THE BAILIFF: All rise for the jury.

9 (Jury exits courtroom.)

10 (Deliberations continue.)

11 THE COURT: Be seated, please.

12 The record will reflect that my  
13 response on Note Number Five to the jury is: Court  
14 responded in open court and I initialed it. File  
15 date this, please. And then give them this note and  
16 number four back and remain seated.

17 Court stand in recess until further  
18 notice.

19 (Deliberations continue.)

20 (Recess.)

21 THE COURT: Before the buzz, jury sent  
22 out a note, Note Number Six, reads as follows:  
23 3/6/12, 3:46 p.m. May we please have a ten minute  
24 recess before entering the courtroom? We need to  
25 compose ourselves briefly. Thank you. Signed,

1 foreman. File dated March 6th, 2012, 3:49 p.m. It's  
2 been over ten minutes.

3 Dear Jurors: Yes, you may.

4 Any objections to this response?

5 MR. LONG: None from the State.

6 MR. SCARDINO: None from the defense,  
7 Your Honor.

8 THE COURT: All right. Thank you.  
9 Signed, David L. Mendoza, Judge, 178th District  
10 Court. File date this, please. Hand it to the  
11 bailiff.

12 MR. SCARDINO: May I address the Court,  
13 Your Honor. Are you going to bring them in the  
14 courtroom?

15 THE COURT: Yes.

16 MR. SCARDINO: Then I have a motion to  
17 make, Your Honor.

18 THE COURT: Okay.

19 MR. SCARDINO: We've been fairly  
20 tolerant of -- of all the police presence in the  
21 courtroom. We'd ask that one of two things take  
22 place. One, if you're going to bring the jurors back  
23 in, that the police officers in uniform be removed,  
24 or they not be brought back in the courtroom. And  
25 the Court can address their 10 minute break in some

1 other fashion. We believe it's intimidating. It's  
2 only for the purposes to intimidate them, being here  
3 when they come in and out.

4 And that's my motion.

5 THE COURT: All right. Bring in  
6 Mr. Buntion, please. Thank you.

7 And hand this to the bailiff. One  
8 second.

9 Let me have that back, please.

10 THE BAILIFF: (Tenders document.)  
11 (Defendant enters courtroom.)

12 THE COURT: The jury sent out a note,  
13 Note Number Six, dated 3/6/12, 3:46 p.m., as follows:  
14 May we please have a 10-minute recess before entering  
15 the courtroom. We need to compose ourselves briefly.  
16 Thank you. Signed, foreman. File dated, March the  
17 6th, 2012, 3:49 p.m.

18 My response is: Dear Jurors: Yes, you  
19 may. Signed, David L. Mendoza, Judge, 178th District  
20 Court. Mr. Buntion was not in the courtroom at that  
21 time I read it and defense counsel had a request and  
22 a motion.

23 Do you care to reiterate it or not?

24 MR. SCARDINO: Sure. Mr. Buntion  
25 wasn't here when I did it.

1 THE COURT: Okay.

2 MR. SCARDINO: I made a motion,  
3 Mr. Buntion, that the -- if the jury's to be brought  
4 back in, just to be released on a break, that the  
5 uniformed officer presence in the courtroom be  
6 removed. Or in the alternative, that they be allowed  
7 to take a break without being brought back in the  
8 courtroom. And the Judge has yet to rule on that.

9 THE COURT: Okay.

10 MR. LONG: We would agree with the  
11 second. I don't see any reason to bring them in the  
12 courtroom, as long as the defense doesn't care, the  
13 State doesn't care if they just want to go out and  
14 take a break.

15 MR. SCARDINO: That's fine with us,  
16 Judge.

17 THE COURT: Okay. Well, let's find  
18 out what they want to do, besides just a break. Does  
19 that mean go outside? Any objections to the bailiff  
20 asking them what they want to do?

21 MR. SCARDINO: No objections, Your  
22 Honor.

23 MR. LONG: None from the State.

24 THE COURT: All right. Go ahead and  
25 ask them what they want to do. Take a fresh air

1 break or what.

2 MR. SCARDINO: May I make inquiry to  
3 the Court, Your Honor?

4 THE COURT: Sure.

5 MR. SCARDINO: Did they send out a  
6 verdict form, also.

7 THE COURT: I haven't seen anything.

8 MR. SCARDINO: Okay.

9 THE COURT: I was just called that they  
10 had a note and here I am.

11 MR. SCARDINO: Thank you.

12 THE BAILIFF: (Tenders note to the  
13 Court.)

14 THE COURT: File date this, please.

15 Jury sent out a note, Note Number  
16 Seven, file dated March 6th, 2012, 4:03 p.m.

17 It reads as follows: 3/6/12, 4:03 p.m.  
18 we have reached a verdict and are ready to proceed.  
19 Thank you. Foreman.

20 All right. Both sides ready for the  
21 jury?

22 MR. SCARDINO: Yes, sir.

23 MR. KEIRNAN: Yes, Your Honor.

24 THE COURT: All right. Bring them in,  
25 please.

1 (Jury Panel enters courtroom.)

2 (Open court; defendant and jury panel  
3 present.)

4 THE COURT: Be seated, please.

5 Good morning, member of the jury.

6 JURY PANEL: Good morning.

7 THE COURT: Mr. Curry, has the jury  
8 arrived at a verdict?

9 JUROR CURRY: Yes, we have, Your Honor.

10 THE COURT: If you would, please stand  
11 up and give it to the bailiff.

12 JUROR CURRY: (Tenders document to the  
13 bailiff.)

14 THE BAILIFF: (Tenders document to the  
15 Court.)

16 THE COURT: Thank you. You may be  
17 seated.

18 Mr. Buntion, please stand up.

19 **VERDICT**

20 THE COURT: In Cause No. 588227, State  
21 of Texas versus Carl Wayne Buntion, 178th District  
22 Court, Harris County, Texas, January term AD, 2012,  
23 special issues with forms for your answers are as  
24 follows:

25 Special Issue Number One: Do you find

1 from the evidence beyond a reasonable doubt that the  
2 conduct of the defendant, Carl Wayne Buntion, that  
3 caused the death of James Irby, was committed  
4 deliberately and with the reasonable expectation what  
5 the death of James Irby or another would result?

6 "ANSWER: We the jury unanimously find  
7 and determine beyond a reasonable doubt that the  
8 answer to this special issue is "yes."

9 Signed, Foreman of The Jury, Steven R.  
10 Curry.

11 Special Issue Number Two: Do you find  
12 from the evidence beyond a reasonable doubt there is  
13 a probability that the defendant, Carl Wayne Buntion,  
14 would commit criminal acts of violence that would  
15 constitute a continuing threat to society?

16 "ANSWER: We the jury unanimously find  
17 and determine beyond a reasonable doubt that the  
18 answer to this special issue is "yes."

19 Signed, Steven R. Curry, Foreman of the  
20 Jury.

21 Special Issue Number Three: Do you  
22 find from the evidence beyond a reasonable doubt that  
23 the conduct of the defendant, Carl Wayne Buntion, in  
24 killing James Irby, was unreasonable in response to  
25 provocation, if any, by James Irby.



1 "ANSWER: We the jury unanimously find  
2 and determine beyond a reasonable doubt that the  
3 answer to this special issue is "yes."

4 Signed, Steven R. Curry, Foreman of The  
5 Jury.

6 In event that the jury has answered all  
7 Special Issues, Numbers One, Two -- Number One,  
8 Number Two and Number Three in the affirmative and  
9 only then shall the jury answer Special Issue Number  
10 Four.

11 Special Issue Number Four: Do you find  
12 from the evidence, taking into consideration all of  
13 the evidence, including the circumstances of the  
14 offense, the defendant's character and background,  
15 and the personal moral culpability of the defendant,  
16 that there is a sufficient mitigating circumstance or  
17 circumstances to warrant that a sentence of life  
18 rather than a death sentence be imposed?

19 You are instructed that in answering  
20 this special issue, that you shall answer the issue  
21 "yes" or "no." You may not answer this issue "no,"  
22 Unless you agree unanimously and you may not answer  
23 this issue "yes," unless ten or more of you agree to  
24 do so.

25 "ANSWER: We the jury unanimously find

1 and determine that the answer to this special issue  
2 is "no."

3 Signed, Steven Curry, Foreman of The  
4 Jury.

5 After the verdict has answered each of  
6 the personal issues under the conditions and  
7 instructions outlined above, the foreman should sign  
8 the verdict form below.

9 Verdict: We the jury return in open  
10 court the above answers to the special issues  
11 submitted to us, and the same is our verdict in this  
12 case.

13 Signed, Steve Curry, Foreman of The  
14 Jury.

15 You may be seated.

16 Does either side wish to have the jury  
17 polled in this matter?

18 MR. SCARDINO: We do, Your Honor.

19 THE COURT: All right. Members of the  
20 jury, at this time the clerk will call your name and  
21 number. If this is your individual verdict, please  
22 answer "yes." If it is not, please answer "no."

23 THE CLERK: Number One, Kristi  
24 Kotsatos?

25 JUROR KOTSATOS: Yes.

1 THE CLERK: Number Two, Valerie Gouan?

2 JUROR GOUAN: Yes.

3 THE CLERK: Number Three, Kimberly

4 Roberts?

5 JUROR ROBERTS: Yes.

6 THE CLERK: Number Four, Robert Holly?

7 JUROR HOLLY: Yes.

8 THE CLERK: Number Five, Danny Richnow?

9 JUROR RICHNOW: Yes.

10 THE CLERK: Number Six, Shirley Weiss?

11 JUROR WEISS: Yes.

12 THE CLERK: Number Seven, Raven McGhee?

13 JUROR MCGHEE: Yes.

14 THE CLERK: Number Eight, Julie

15 Otermat?

16 JUROR OTERMAT: Yes.

17 THE CLERK: Number Nine, Julianne

18 Turek?

19 JUROR TUREK: Yes.

20 THE CLERK: Number Ten, Steven Curry?

21 JUROR CURRY: Yes.

22 THE CLERK: Number 11, Amy Bogner?

23 JUROR BOGNER: Yes.

24 THE CLERK: And Number 12, Geri

25 Patterson?

1 JUROR PATTERSON: Yes.

2 THE COURT: The verdict of the jury is  
3 received by the Court. Anything further before the  
4 jury is dismissed, by either side?

5 MS. DOZIER: No, Your Honor.

6 MR. SCARDINO: No, Your Honor.

7 THE COURT: All right. Thank you.

8 Ladies and gentlemen of the jury, we  
9 want to thank you very, very much for your time and  
10 your attention. The time you spent with us over  
11 these past several weeks, as we told you when we  
12 started out in this process, that your service would  
13 be appreciated and it would not be an easy thing that  
14 you would be asked to do. But we are certainly  
15 thankful for your time and service.

16 You are now released from the  
17 admonitions which I'd previously given you. Which  
18 means that you may discuss the case with anyone you  
19 choose. You are also free to refuse to discuss -- or  
20 not discuss the case with anyone you choose. That's  
21 your business.

22 Oftentimes in a trial of this nature or  
23 any trial is conducted, sometimes after the trial's  
24 conducted, attorneys for either side can ask  
25 questions about certain issues in the case. You're

1 free to talk to them, you're free not talk to them.

2 That's certainly your right.

3 I know that for some of you, if not all  
4 you, it has been an inconvenience to take time out  
5 from your schedule out of your daily lives, your work  
6 responsibilities, your family obligations, in order  
7 to serve as jurors in this case. But I think you can  
8 see and I hope you can appreciate why we need this  
9 system. It's one of the best systems that we have.  
10 And that while it is an inconvenience, I suggest to  
11 you that it is a necessary convenience to the  
12 administration of justice and we certainly thank you.

13 At this time, I'm going to ask you to  
14 return to the jury room. Please place your badges on  
15 the table in the jury room. I'll be back in the jury  
16 room with you in a few minutes to discharge you.

17 At this time, I'm going to ask the  
18 bailiff to go ahead and take you to the jury room.

19 THE BAILIFF: All rise for the jury.

20 (Jury exits courtroom.)

21 THE COURT: Be seated, please.

22 I'm going to go into the jury room and  
23 discharge the jury, then I'll be back shortly and  
24 sentence the defendant.

25 MR. SCARDINO: The -- may I address the

1 Court, Your Honor?

2 THE COURT: Yes.

3 MR. SCARDINO: Are you going to make --  
4 if they want to speak to either side, we're available  
5 to speak with them. Are you going to ask them that?

6 THE COURT: Yes.

7 MR. SCARDINO: Thank you.

8 THE COURT: I'm going to ask them if  
9 they want to speak to the lawyers, and they're free  
10 to stay, they're free to leave; but, yes.

11 MR. SCARDINO: Thank you, Your Honor.

12 THE COURT: All right. Remain seated.

13 The Court stand in recess, briefly.

14 (Recess.)

15 THE COURT: Be seated, please.

16 Bring out Mr. Buntion.

17 (Defendant enters courtroom.)

18 THE COURT: Both sides ready?

19 MR. SCARDINO: Yes, sir.

20 MS. DOZIER: Yes, Your Honor.

21 **SENTENCING**

22 THE COURT: All right. Mr. Buntion,  
23 the jury having returned a verdict of -- in answer to  
24 Special Issue Number One of "yes," to Special Issue  
25 Number Two, "yes," to Special Issue Number Three,

1 "yes," and to Special Issue Number Four, "no," it now  
2 becomes the Court's responsibility to pronounce  
3 sentence.

4                   It is the order of the Court that you,  
5 Carl Wayne Buntion, who has been adjudged to be  
6 guilty of the offense of capital murder, and whose  
7 punishment has been assessed by a verdict of the jury  
8 and judgment of this Court, that death shall be  
9 delivered by the Sheriff of Harris County, Texas,  
10 immediately to the director of the Institutional  
11 Division of the Texas Department of Criminal Justice  
12 or any other person legally authorized to receive  
13 such convicts.

14                   And that you shall be confined in said  
15 institutional division, in accordance with the  
16 provisions of the law governing the Texas Department  
17 of Criminal Justice Institutional Division, until the  
18 date of execution is imposed by this Court.

19                   At the receipt by this Court of a  
20 Mandate of Affirmance from the Court of Criminal  
21 Appeals of the State of Texas. You are here now  
22 remanded to the custody of the sheriff's, until he  
23 can obey and carry out the directions and  
24 instructions of this sentence.

25                   Good luck to you, sir.

1                   That concludes this hearing.

2                   You may be seated.

3                   MR. SCARDINO: May we have just a  
4 moment, Your Honor? We're filling out a couple of  
5 forms that the Court has provided.

6                   THE COURT: You may.

7                   (Discussion off the record.)

8                   THE COURT: On the record.

9                   I want to thank counsel for the State  
10 and counsel for defense for a professional  
11 presentation of this case. That's Mr. Lance Long,  
12 Ms. Caroline Dozier, Mr. John Casey Keirnan,  
13 Mr. Phillip J. Scardino -- J. Phillip Scardino.

14                   MR. SCARDINO: Thank you.

15                   THE COURT: Thank you lady and  
16 gentlemen.

17                   That concludes this case, Court is  
18 adjourned.

19                   (Court adjourned.)

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1 STATE OF TEXAS

2 COUNTY OF HARRIS

3

4 I, Tammy L. Adams, Official Court Reporter  
5 in and for the 178th District Court of Harris, State  
6 of Texas, do hereby certify that the above and  
7 foregoing contains a true and correct transcription  
8 of all portions of evidence and other proceedings  
9 requested in writing by counsel for the parties to  
10 be included in this volume of the Reporter's Record  
11 in the above-styled and numbered cause, all of which  
12 occurred in open court or in chambers and were  
13 reported by me.

14 I further certify that this Reporter's  
15 Record of the proceedings truly and correctly  
16 reflects the exhibits, if any, offered by the  
17 respective parties.

18 I further certify that the total cost for  
19 the preparation of this Reporter's Record is (See  
20 Volume 50), and was paid by Harris County.

21 WITNESS MY OFFICIAL HAND this the 30th day  
22 of October, 2012.

23

24

25

26

/s/Tammy L. Adams

27

Tammy L. Adams, CSR  
Texas CSR 6101  
Official Court Reporter  
178th District Court  
Harris County, Texas  
1201 Franklin, 19th Floor  
Houston, Texas 77002  
Telephone: 713/755-0880  
Expiration: 12/31/14

28

29

TAMMY L. ADAMS, CSR  
OFFICIAL COURT REPORTER  
178TH DISTRICT COURT

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